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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,993	05/22/2001	David Dines	1017-002US02	7510

28863 7590 10/22/2003  
SHUMAKER & SIEFFERT, P. A.  
8425 SEASONS PARKWAY  
SUITE 105  
ST. PAUL, MN 55125

EXAMINER
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ZEENDER, FLORIAN M

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/862,993

Applicant(s)

DINES ET AL.

Examiner

F. Ryan Zeender

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-16 and 24-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-16 and 24-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/22/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 8-16, 24-35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-11, and 17-28 of copending Application No. 09/862992. Although the conflicting claims are not identical, they are not patentably distinct from each other because agricultural products are often commodities.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

Claims 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daughtery, III, '286.

Daughtery III discloses various means and various scenarios for exchanging commodities as well as means for hedging with options and futures contracts (See, for example, columns 1-2).

Daughtery III lacks the specific teaching of aggregating contracts into a smaller number of contracts between the buyer and a derivatives provider.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Daughtery to include aggregating contracts into a smaller number of contracts between the buyer and a derivatives provider, as it is known for example in the agricultural products industry, that buyers (i.e., cereal manufacturers), may have contracts with a number of different farmers and that buyers purchase options, perhaps only a **single** options contract with a derivatives provider, in order to hedge against price fluctuations and thus be guaranteed at least a certain price (See, for example, Col. 7, lines 38-51).

Re claim 11: the producers/sellers (i.e., farmers) have absolutely no relationship with the derivatives provider with whom the buyer (i.e., cereal manufacturer, in the example above) is dealing with. Thus, there is anonymity.

Re claim 12: it is well known in the art of business to have various "middlemen" who buy and sell goods/commodities as well as options contracts and the use of a middleman would have been obvious to one of ordinary skill in the art at the time of the invention.

Re claims 14-16: all of the claimed commodities are well known and it would have been obvious to one of ordinary skill in the art at the time of the invention to buy and sell contracts having any one of the commodities as the underlying asset.

### ***Response to Arguments***

Applicant's arguments filed 9/8/03, with respect to claims 24-35 have been fully considered and are persuasive. The Examiner agrees with the applicant that there is a lack of evidence supporting the Examiner's original position. Therefore, the rejection of claims 24-35 has been withdrawn.

However, applicant's arguments with respect to claims 8-16 are not persuasive. Applicant argues on page 10, 4th paragraph, of his response that "nowhere in this passage does Daughtery mention that the cereal manufacturer has any contracts for delivery of quantities of a commodity". However, the cereal manufacturer purchases wheat from a farmer (Daughtery, Col. 7, lines 37-65) for delivery to itself, which is in fact a contract. A multiplicity of these types of contracts is a design choice in order to meet the needs of the manufacturer.

The applicant then argues in the 1<sup>st</sup> paragraph of page 11 of his response, that the Examiner misses the point and that the reference does not teach "aggregating contracts for delivery of quantities of a commodity between an elevator and agricultural producers...". However, when the claims (specifically claim 8) is interpreted broadly, Daughtery does teach the limitation when the underlying asset of the option is wheat.

On page 12, paragraph 3 of his response, the applicant argues that the use of middlemen is not supported by evidence. The Examiner suggests that the applicant

refer to Webster's dictionary as a reference to support the well known concept of using middlemen as intermediary agents.

On page 12, 3<sup>rd</sup> paragraph, the applicant argues that the Examiner's statement that the commodities claimed in claims 14-16 are well known may be erroneous and is not supported by a reference. The Examiner suggests that the applicant refer to the web sites of the Chicago Board of Trade and/or the Chicago Mercantile Exchange for evidence that the claimed commodities are well known to one of ordinary skill in the art.

***Allowable Subject Matter***

Claims 24-35 are allowable over prior art.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Ryan Zeender whose telephone number is (703) 308-8351. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Olszewski can be reached at (703) 308-5183. The receptionist's phone number for the Technology center is (703) 308-1113.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9327.

 10/20/03

F. Zeender  
Patent Examiner, A.U. 3627  
October 20, 2003